



*Commonwealth of Virginia*

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**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
JMB INVESTMENT COMPANY, LLC  
FOR  
4 CONSTRUCTION SITES  
Virginia Pollutant Discharge Elimination System Permit VAR10**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, between the State Water Control Board and JMB Investment Company, LLC regarding four construction sites for the purpose of resolving certain violations of the State Water Control Law and the applicable permits and regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "2014 Permit" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, promulgated at 9 VAC 25-880-70, which was issued under the State Water Control Law, the VSMP Regulations, and the General Permit Regulation on July 1, 2014 and which expires on June 30, 2019.

2. "2019 Permit" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, which is effective July 1, 2019 and which expires on June 30, 2024.
3. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
4. "Construction activity" means any clearing, grading or excavation resulting in land disturbance of equal to or greater than one acre, or disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. "Discharge" means the discharge of a pollutant.
8. "Discharge of a pollutant" means:
  - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
9. "JMB" means JMB Investment Company, LLC, a company authorized to do business in Virginia and its affiliates, partners, and subsidiaries. JMB is a "person" within the meaning of Va. Code § 62.1-44.3.
10. "Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, except that the term shall not include those exemptions specified in Va. Code § 62.1-44.15:34.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
13. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

14. "Registration Statement" means a registration statement for coverage under the State Permit.
15. "Site 1" means the construction activity located north off of Route 58 approximately 0.38 miles west of the intersection of State Routes 58 and 709 at latitude 36.6519 and longitude -82.4733 near Hiltons in Scott County, Virginia, from which discharges of stormwater associated with construction activity occur. JMB received permit coverage for the site under the General Permit for Discharges of Stormwater from Construction Activities and was assigned registration number VAR10I299.
16. "Site 2" means the construction activity located at the intersection of Old Pipers Gap Road and Flower Gap Road at latitude 36.5185 and longitude -80.7347 in Carroll County, Virginia, from which discharges of stormwater associated with construction activity occur. JMB received permit coverage for the site under the General Permit for Discharges of Stormwater from Construction Activities and was assigned registration number VAR10L033.
17. "Site 3" means the construction activity located at the intersection of Cedar Springs Road and Grayson Turnpike at latitude 36.8150 and longitude -81.1751 in Wythe County, Virginia, from which discharges of stormwater associated with construction activity occur. JMB received permit coverage for the site under the General Permit for Discharges of Stormwater from Construction Activities and was assigned registration number VAR10K238.
18. "Site 4" means the construction activity located off of Rocky Hill Road at latitude 37.1341 and longitude -77.9147 on Rocky Hill Road in Nottoway County, Virginia, from which discharges of stormwater associated with construction activity occur. JMB received permit coverage for the site under the General Permit for Discharges of Stormwater from Construction Activities and was assigned registration number VAR10M434.
19. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
20. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Va. Code.
21. "State Waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
22. "Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage. Va. Code § 62.1-44.15:24.

23. "Stormwater management plan" means a document or series of documents containing material describing methods for complying with the requirements of a VSMP or the VSMP Regulations. 9 VAC 25-870-10.
24. "SWPPP" means Stormwater Pollution Prevention Plan, which is a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required under a VSMP for construction activities shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan. 9 VAC 25-870-10.
25. "Virginia Stormwater Management Act" means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Va. Code.
26. "Va. Code" means the Code of Virginia (1950), as amended.
27. "VAC" means the Virginia Administrative Code.
28. "VPDES" means Virginia Pollutant Discharge Elimination System.
29. "VSMP" means the Virginia Stormwater Management Program, which is a program approved by the Soil and Water Conservation Board after September 13, 2011, and until June 30, 2013, or the State Water Control Board on and after June 30, 2013, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations. Va. Code § 62.1-44.15:24.
30. "VSMP authority" means an authority approved by the Board after September 13, 2011, to operate a VSMP or, until such approval is given, the Department. An authority may include a locality; state entity, including the Department; federal entity; or for linear projects subject annual standards and specifications in accordance with subsection B of § 62.1-44.15-31, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102. Va. Code § 62.1-44.15:24.
31. "VSMP Regulations" means the Virginia Stormwater Management Program (VSMP) Regulations, 9 VAC 25-870-10 et seq.

**SECTION C: Findings of Fact and Conclusions of Law**

**Site 1**

1. JMB is the owner and operator for Site 1, located in Scott County, which discharges stormwater associated with construction activity.
2. DEQ is the VSMP authority for Scott County.
3. JMB applied for and, on June 7, 2018, was granted coverage under the 2014 Permit. The site was assigned registration number VAR10I299. The 2014 Permit coverage is administratively continued until 2019 Permit coverage is issued or DEQ notifies JMB that it is not eligible for coverage under the 2019 Permit.
4. The 2014 Permit allows JMB to discharge stormwater associated with construction activities from Site 1 to Hiltons Creek and the North Fork of the Holston River in strict compliance with the terms and conditions of the 2014 Permit.
5. Hiltons Creek and the North Fork of the Holston River are surface waters located wholly within the Commonwealth and are “state waters” under the State Water Control Law.
6. During inspections on November 13, 2018, August 21, 2019, and September 30, 2019, DEQ staff documented that a copy of the notice of coverage letter was not posted conspicuously near the main entrance of the construction activity.

Permit Part II(C) states in part: “Upon commencement of land disturbance, the operator shall post conspicuously a copy of the notice of coverage letter near the main entrance of the construction activity... The operator shall maintain the posted information until termination of general permit coverage as specified in Part I F.”

7. During an inspection on August 21, 2019, DEQ staff documented that no SWPPP inspections were documented in the SWPPP. During an inspection on September 30, 2019, DEQ staff documented that SWPPP inspections were not conducted at the required frequency.

Permit Part II.F.2 states: “Inspection schedule. a. Inspections shall be conducted at a frequency of: (1) At least once every five business days; or (2) At least once every 10 business days and no later than 48 hours following a measurable storm event. In the event that a measurable storm event occurs when there are more than 48 hours between business days, the inspection shall be conducted no later than the next business day.”

Permit Part II.F.3 states in part: “Inspection requirements. As part of the inspection, the qualified personnel shall: (1) Record the date and time of the inspection and...”

Permit Part II.F.4 states in part: "Inspection report. Each inspection report shall include the following items: a. The date and time of the inspection and... The inspection report and any actions taken in accordance with Part II must be retained by the operator as part of the SWPPP for at least three years from the date that general permit coverage expires or is terminated."

8. During an inspection on August 21, 2019, and September 30, 2019, DEQ staff observed areas at final grade where an adequate permanent vegetative cover had not been established.

9 VAC 25-840-40(3) states: "A permanent vegetative cover shall be established on denuded areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved that is uniform, mature enough to survive and will inhibit erosion."

9 VAC 25-870-54(B) states in part: "An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities."

9. During inspections on December 5, 2018 and August 21, 2019, DEQ staff observed the inside of the permanent detention basin had not been stabilized immediately after installation.

9 VAC 25-840-40(5) states: "Stabilization measures shall be applied to earthen structures such as dams, dikes and diversions immediately after installation."

9 VAC 25-870-54(B) states in part: "An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities."

10. During inspections on November 13, 2018, December 5, 2018, May 20, 2019, and August 21, 2019, DEQ staff observed that stormwater runoff from the parking lot in front of the building was not reaching the permanent stormwater basin because the riprap channel lining and curb were not installed properly. DEQ staff observed that stormwater runoff discharging off the edge of the parking lot was jumping the hand manufactured curb and discharging over the retaining wall.

9 VAC 25-870-54(B) states in part: "An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities."

9 VAC 25-870-54(C) states in part: "A stormwater management plan consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during construction activities."

9 VAC 25-840-40(11) states: "Before newly constructed stormwater conveyance channels or pipes are made operational, adequate outlet protection and any required temporary or permanent

11. During inspections on November 13, 2018, December 5, 2018, May 20, 2019, and August 21, 2019, DEQ staff observed that the VDOT gabion stone ditch that is designed to discharge into drainage channel DB3 was not installed per the approved stormwater management plan to maintain positive drainage to the basin. On September 30, 2019, DEQ staff observed that drainage ditch DB3 had not been installed per the approved plan. The ditch had been reshaped since the previous inspection but the VDOT gabion stone lining had been removed.

9 VAC 25-870-54(C) states in part: "A stormwater management plan consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during construction activities."

9 VAC 25-840-40(11) states: "Before newly constructed stormwater conveyance channels or pipes are made operational, adequate outlet protection and any required temporary or permanent

12. During inspections on December 5, 2018, May 20, 2019, and August 21, 2019, DEQ staff observed that the permanent stormwater detention basin had not been constructed in accordance with the approved stormwater management plan and plan modification approved April 17, 2019. The dewatering holes were installed at the incorrect elevation, the emergency spillway was not graded to drain, and the rip rap lining had not been installed. Due to the failure to follow the approved plans, erosion was occurring around the edges of the gabion stone receiving flows from drainage channel DB-5 and sediment from erosion had contaminated the stone placed in the underdrain.

9 VAC 25-870-54(C) states in part: "A stormwater management plan consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during construction activities."

13. During an inspection on September 30, 2019, DEQ staff observed silt fence stakes, from silt fence removal operations, that were scattered throughout the project without being properly disposed.

2019 Permit Part II.B.4.e.6 states, "Minimize the discharge of pollutants from storage, handling, and disposal of construction products, materials, and wastes including... (iii) construction and domestic wastes... and other trash or building materials."

14. Va. Code § 62.1-44.5 states in part, "Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to . . . Discharge stormwater

into state waters from Municipal Separate Storm Sewer Systems or land disturbing activities.”

15. The VSMP Regulations, at 9 VAC 25-870-310(A), also states, “Except in compliance with a state permit issued by the board pursuant to the Virginia Stormwater Management Act, it shall be unlawful for any person to discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land-disturbing activities.”
16. DEQ conducted a site inspection on February 19, 2020 and documented that the violations described in paragraphs C (6)-(15) have been corrected.
17. Based on the results of the November 13, 2018, December 5, 2018, May 20, 2019, August 21, 2019, and September 30, 2019 inspections, the Board concludes that JMB violated Va. Code § 62.1-44.5, 9 VAC 25-870-310(A), 9 VAC 25-840-40(3), 9 VAC 25-840-40(5), 9 VAC 25-840-40(11), 9 VAC 25-870-54(B), 9 VAC 25-870-54(C) and the conditions of Sections IIB, IIC and IIF of the 2014 Permit, by discharging stormwater from a construction activity while concurrently failing to comply with the conditions of the State Permit, as described in paragraphs C(6)-(15) of this Order.

## Site 2

18. JMB is the owner and operator for Site 2, located in Carroll County, which discharges stormwater associated with construction activity.
19. DEQ is the VSMP authority for Carroll County.
20. JMB applied for and, on August 22, 2018, was granted coverage under the 2014 Permit. The site was assigned registration number VAR10L033. On May 31, 2019, JMB submitted a registration statement for coverage under the 2019 Permit. The 2014 Permit coverage was administratively continued until October 23, 2019 when DEQ issued JMB coverage under the 2019 Permit.
21. The 2014 Permit allows JMB to discharge stormwater associated with construction activities from Site 2 to Stewarts Creek in strict compliance with the terms and conditions of the 2014 Permit.
22. Stewarts Creek is a surface water located wholly within the Commonwealth and is a “state water” under the State Water Control Law.
23. During inspections on July 30, 2019, August 20, 2019, and October 2, 2019, DEQ staff documented that outlet protection and channel linings had not been installed or had been installed in accordance with the approved erosion and sediment control plan.



9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.”

9 VAC 25-840-40(11) states: “Before newly constructed stormwater conveyance channels or pipes are made operational, adequate outlet protection and any required temporary or permanent channel lining shall be installed in both the conveyance channel and receiving channel.”

24. During inspections on July 30, 2019, August 20, 2019, and October 2, 2019, DEQ staff observed concentrated flows that were not adequately contained in an adequate ditch, flume, or other temporary or permanent structure.

9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.”

9 VAC 25-840-40(8) states: “Concentrated runoff shall not flow down cut or fill slopes unless contained within an adequate temporary or permanent channel, flow or slope drain structure.”

25. During the inspections on July 30, 2019, August 20, 2019, and October 2, 2019, erosion and sediment control measures were not being properly maintained in effective operating condition.

9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.”

9VAC 25-840-60(A) states in part: “All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function...”

Permit Part II(E)(1) states in part: “All control measures must be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications.”

26. Va. Code § 62.1-44.5 states in part, “Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to . . . Discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land disturbing activities.”
27. The VSMP Regulations, at 9 VAC 25-870-310(A), also states, “Except in compliance with a state permit issued by the board pursuant to the Virginia Stormwater Management

Act, it shall be unlawful for any person to discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land-disturbing activities.”

28. DEQ staff conducted a site inspection on February 6, 2020 and confirmed that the violations described in paragraphs C (23)-(27) have been corrected.
29. Based on the results of the July 30, 2019, August 20, 2019, and October 2, 2019 inspections, the Board concludes that JMB violated Va. Code § 62.1-44.5, 9 VAC 25-870-310(A), 9 VAC 25-840-40(8), 9 VAC 25-840-40(11), 9 VAC 25-870-54(B), 9 VAC 25-840-60(A) and the conditions of Section II.E.1 of the 2014 Permit, by discharging stormwater from a construction activity while concurrently failing to comply with the conditions of the State Permit, as described in paragraphs C (23) -(27) of this Order.

### Site 3

30. JMB is the owner and operator for Site 3, located in Wythe County, which discharges stormwater associated with construction activity.
31. DEQ is the VSMP authority for Wythe County.
32. JMB applied for and, on May 16, 2019, was granted coverage under the 2014 Permit. The site was assigned registration number VAR10K238. JMB did not submit a registration statement for coverage under the 2019 Permit prior to the expiration date of the 2014 Permit. Therefore, JMB’s 2014 Permit coverage for Site 3 expired on June 30, 2019. On August 5, 2019, JMB submitted a registration statement for 2019 Permit coverage and 2019 Permit coverage was issued on August 7, 2019.
33. The 2014 Permit allowed and the 2019 Permit allows JMB to discharge stormwater associated with construction activities from Site 3 to Cripple Creek and an unnamed tributary to Cripple Creek in strict compliance with the terms and conditions of the 2014 Permit and 2019 Permit.
34. Cripple Creek and the unnamed tributary of Cripple Creek are surface waters located wholly within the Commonwealth and are “state waters” under the State Water Control Law.
35. During the inspection on July 29, 2019, DEQ staff visited the Site and observed that land-disturbing activities greater than one acre have occurred at the Site in an area subject to stormwater runoff. JMB did not submit a registration statement prior to the expiration date of the 2014 Permit. JMB’s 2014 Permit coverage expired on June 30, 2019 and it did not submit a registration statement until August 5, 2019 and obtained 2019 Permit coverage on August 7, 2019.

9 VAC 25-880-50 states: “Any operator who was authorized to discharge under the expiring or expired general permit and who intends to continue coverage under this

general permit shall: (1) submit a complete and accurate registration statement to the VSMP authority at least 60 days prior to the expiration date of the permit or a later date established by the board.”

2014 Permit Part III.M states: “If the operator wishes to continue an activity regulated by this general permit after the expiration date of this general permit, the operator shall submit a new registration statement at least 60 days before the expiration date of the existing general permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing general permit.”

Va. Code § 62.1-44.15:34(A) states: “A person shall not conduct any land-disturbing activity until he has submitted a permit application to the VSMP authority that includes a state VSMP permit registration statement, if such statement is required, and, after July 1, 2014, a stormwater management plan or executed agreement in lieu of a stormwater management plan, and has obtained VSMP authority approval to begin land disturbance.” Va. Code § 62.1-44.5 states in part, “Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to . . . Discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land disturbing activities.”

36. During inspections on July 29, 2019, August 21, 2019, and September 25, 2019, DEQ staff observed areas of land disturbance, which had no functional sediment trapping controls in place down gradient.

9 VAC 25-840-40(4) states: “Sediment basins and traps, perimeter dikes, sediment barriers and other measures intended to trap sediment shall be constructed as a first step in any land-disturbing activity and shall be made functional before upslope land disturbance takes place.”

9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.”

37. During the July 29, 2019, August 21, 2019, and September 25, 2019 inspections, DEQ staff observed that the sequencing of the project, as outlined in the approved erosion and sediment control plan, had not been followed. On August 21, 2019, the following observations were documented:

- a. Line D3 and associated outlet protection had not been installed from the basin to the stream for discharge and the concrete base for the riser structure had not been installed to make the temporary sediment basin functional.

- b. Line D1.2 and the associated endwall and culvert inlet protection had not been installed and made operational. This, coupled with the presence of the building pad, precluded any sediment laden runoff from the southern portion of the Site from entering the basin to be treated as shown on the approved plan.
- c. Drainage ditch "A" and associated outlet protection have not been installed between the back of the store and toe of the slope to convey flows to the basin.

On September 25, 2019, DEQ staff observed that the basin was not functional prior to up-gradient land disturbance and the discharge was not yet operational.

9 VAC 25-870-54(B) states in part: "An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities."

9 VAC 25-840-40(11) states: "Before newly constructed stormwater conveyance channels or pipes are made operational, adequate outlet protection and any required temporary or permanent

38. During the inspections on July 29, 2019, August 21, 2019, and September 25, 2019, DEQ staff observed that the earthen embankment of the basin had not been stabilized immediately following installation.

9 VAC 25-840-40(5) states: "Stabilization measures shall be applied to earthen structures such as dams, dikes and diversions immediately after installation."

9 VAC 25-870-54(B) states in part: "An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities."

39. During the inspection on August 21, 2019, DEQ staff observed that construction waste and debris had not been properly disposed of.

2019 Permit Part II.B.4.e.6 states: "The pollution prevention plan shall describe the pollution prevention practices and procedures that will be implemented to minimize the discharge of pollutants from storage, handling, and disposal of construction products, materials, and wastes including (i) building products... (iii) construction and domestic wastes... and other trash or building materials."

40. During the inspection on September 25, 2019, DEQ staff observed that a copy of the 2019 Permit was not contained in the SWPPP.

2019 Permit Part II.B.1.c states, "The SWPPP shall include the following items: 1. General information. c. Upon receipt, a copy of the general VPDES permit for discharges of stormwater from construction activities."

41. During the inspection on September 25, 2019, DEQ staff observed that the SWPPP had not been updated when modifications to its implementation had occurred.

2019 Permit Part II.C.4.a states, "The operator shall update the SWPPP as soon as possible but no later than seven days following any modification to its implementation. All modifications or updates to the SWPPP shall be noted and shall include the following items: a. A record of dates when: (1) Major grading activities occur; (2) Construction activities temporarily or permanently cease on a portion of the site; and (3) Stabilization measures are initiated."

42. During the inspection on September 25, 2019, DEQ staff observed that corrective actions identified as a result of an inspection had not occurred within the timeframe specified in the 2019 Permit.

2019 Permit Part II.H.1. states, "The operator shall implement the corrective actions identified as a result of an inspection as soon as practicable but no later than seven days after discovery or a longer period as approved by the VSMP authority."

43. During the inspection on September 25, 2019, DEQ staff observed that sediment traps and basins had not been installed in accordance with the Virginia Erosion and Sediment Control Regulations and the approved plan.

9 VAC 25-840-40(6) states, "Sediment traps and basins shall be designed and constructed based upon the total drainage area to be served by the trap or basin. The minimum storage capacity of a sediment trap shall be 134 cubic yards per acre of drainage area and the trap shall only control drainage area less than three acres. Surface runoff from disturbed areas that is comprised of flow from drainage areas greater than or equal to three acres shall be controlled by a sediment basin. The minimum storage capacity of a sediment basin shall be 134 cubic yards per acre of drainage area..."

9 VAC 25-870-54(B) states in part: "An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities."

44. During the inspection on September 25, 2019, DEQ staff observed that inlet protection had not been installed in accordance with the approved plan or was not installed in accordance with the detail on the approved plan.

9 VAC 25-840-40(10) states, "All storm inlets that are made operable during construction shall be protected so that sediment laden water cannot enter the conveyance system without first being filtered or otherwise treated to remove sediment."

9 VAC 25-870-54(B) states in part: "An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities."

45. During the inspection on September 25, 2019, DEQ staff observed that appropriate measures had not been taken to ensure discharge to an adequate channel.

9 VAC 25-840-40(19) states: "Properties and waterways downstream from development sites shall be protected from sediment deposition, erosion and damage due to increases in volume, velocity and peak flow rate of stormwater runoff for the stated frequency storm of 24-hour duration in accordance with the following standards and criteria....a. Concentrated stormwater runoff leaving a development site shall be discharged directly into an adequate natural or man-made receiving channel, pipe or storm sewer system....b. Adequacy of all channels and pipes shall be verified..."

9 VAC 25-870-66 states: "A. Channel protection and flood protection shall be addressed in accordance with the minimum standards set out in this section..."

46. During the inspection on September 25, 2019, DEQ staff observed sediment controls that were not maintained in effective operating condition.

9 VAC 25-840-60(A) states, "All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function."

2019 Permit Part II.F.1 states, "All control measures shall be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications."

47. During the inspection on September 25, 2019, DEQ staff observed concrete washouts that were not contained in a leak proof container or settling basin.

2019 Permit Part II.B.4.e.5 states, "The pollution prevention plan shall describe the pollution prevention practices and procedures that will be implemented to direct concrete wash water into a leak-proof container or leak-proof settling basin."

9 VAC 25-870-56 states, "The pollution prevention plan shall include effective best management practices to prohibit the following discharges... 1. Wastewater from washout of concrete, unless managed by an appropriate control."

48. The VSMP Regulations, at 9 VAC 25-870-310(A), also states, "Except in compliance with a state permit issued by the board pursuant to the Virginia Stormwater Management Act, it shall be unlawful for any person to discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land-disturbing activities."

49. Va. Code § 62.1-44.5 states in part, “Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to . . . Discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land disturbing activities.”
50. JMB has submitted documentation of corrective actions for violations described in paragraphs C(35)-(49) of this Order.
51. Based on the results of the July 29, 2019, August 21, 2019, and September 25, 2019 inspections, the Board concludes that JMB violated Va. Code § 62.1-44.5, 9 VAC 25-870-310(A), 9 VAC 25-840-40(4), 9 VAC 25-840-40(11), 9 VAC 25-840-40(5), 9 VAC 25-840-40(6), 9 VAC 25-840-40(10), 9 VAC 25-840-40(19), 9 VAC 25-840-60(A), 9 VAC 25-870-54(B), 9 VAC 25-870-56, 9 VAC 25-870-66, and 9 VAC 25-880-50 and the conditions of Sections II.B.4 and III.M, of the 2014 Permit, and the conditions of Sections II.B.1, II.B.4, II.C.4, II.F, and II.H.1, of the 2019 Permit, by discharging stormwater from a construction activity while concurrently failing to comply with the conditions of the State Permit, as described in paragraphs C(35)-(49) of this Order.

#### Site 4

52. JMB is the owner and operator for Site 4, located in Nottoway County, Virginia, which discharges stormwater associated with construction activity.
53. DEQ is the VSMP authority for Nottoway County.
54. JMB applied for and, on August 20, 2019, was granted coverage under the 2019 Permit. The site was assigned registration number VAR10M434.
55. The 2019 Permit allows JMB to discharge stormwater associated with construction activities from Site 4 to Luthers Branch in strict compliance with the terms and conditions of the 2014 Permit.
56. Luthers Branch is a surface water located wholly within the Commonwealth and is a “state water” under the State Water Control Law.
57. During an inspection on October 10, 2019, DEQ staff observed that a signed copy of the registration statement, a copy of the notice of coverage letter, and a narrative description of the nature of the construction activity was not in the SWPPP on Site.

2019 Permit Part II.B. states in part: “The SWPPP shall include the following items: 1. General information. a. A signed copy of the registration statement...b. Upon receipt, a copy of the notice of coverage...d. A narrative description of the nature of the construction activity.”

58. During the inspection on October 10, 2019, DEQ staff observed that no pollution prevention plan was in the SWPPP.

2019 Permit Part II.B states in part: "The SWPPP shall include the following items: 4. A pollution prevention plan that addresses potential pollutant-generating activities that may reasonably be expected to affect the quality of stormwater discharges from the construction activity, including any support activity."

9 VAC 25-870-54(D) states: "A pollution prevention plan that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site and describe control measures that will be used to minimize pollutants in stormwater discharges from the construction site must be developed before land disturbance commences."

59. During the inspection on October 10, 2019, DEQ staff observed that the SWPPP did not identify qualified personnel for conducting inspections at the Site and did not identify individual(s) listed as the delegated authority and the operator had not signed the delegation of authority certification statement in the SWPPP.

2019 Permit Part II.B. states in part: "The SWPPP shall include the following items: 8. Identification of qualified personnel. The name, phone number, and qualifications of the qualified personnel conducting inspections required by this general permit. 9. Delegation of authority. The individuals or positions with delegated authority, in accordance with Part III.K, to sign inspection reports or modify the SWPPP. 10. SWPPP signature. The SWPPP shall be signed and dated in accordance with Part III K.

60. During the inspection on October 10, 2019, DEQ staff observed that SWPPP inspections were not conducted and recorded at the minimum frequency required by the Permit. In addition, DEQ staff observed that the SWPPP inspection reports did not include all items listed in the Permit including the signature of a delegated authority. In addition, no corrective actions were listed in the SWPPP.

2019 Permit Part II.G.2 states in part: "Inspections shall be conducted at a frequency of (i) at least once every four business days or (ii) at least once every five business days and no later than 24 hours following a measurable storm event. In the event that a measurable storm event occurs when there are more than 24 hours between business days, the inspection shall be conducted on the next business day."

2019 Permit Part II.G.4 lists the items that shall be included in each inspection report, including a list of corrective actions required as a result of the inspection or to maintain compliance.

2019 Permit Part II.G.6 states that the inspection report shall be signed in accordance with Part III K.



61. During the inspection on October 10, 2019, DEQ staff observed that the SWPPP was not updated or amended to contain a record of dates when major grading activities occurred, construction activities temporarily or permanently ceased on a portion of the Site, or when stabilization measures were initiated. The SWPPP did not contain a record of changes in design, construction, operation, or maintenance. The SWPPP did not document the removal of the sediment trap and diversion. The SWPPP also did not contain a list of contractors that will implement and maintain each control measure.

2019 Permit Part II.C.1 states: "The operator shall amend the SWPPP whenever there is a change in the design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to surface waters and that has not been previously addressed in the SWPPP."

2019 Permit Part II.C.3 states: "The SWPPP shall clearly identify the contractors that will implement and maintain each control measure identified in the SWPPP. The SWPPP shall be amended to identify any new contractor that will implement and maintain a control measure."

2019 Permit Part II.C.4 states: "The operator shall update the SWPPP as soon as possible but no later than seven days following any modification to its implementation. All modifications or updates to the SWPPP shall be noted and shall include the following items: a. A record of dates when: (1) Major grading activities occur; (2) Construction activities temporarily or permanently cease on a portion of the site; and (3) Stabilization measures are initiated; b. Documentation of replaced or modified controls where periodic inspections or other information have indicated that the controls have been used inappropriately or incorrectly and were modified; c. Areas that have reached final stabilization and where no further SWPPP or inspection requirements apply; d. All properties that are no longer under the legal control of the operator and the dates on which the operator no longer had legal control over each property; e. The date of any prohibited discharges, the discharge volume released, and what actions were taken to minimize the impact of the release; f. Measures taken to prevent the reoccurrence of any prohibited discharge; and g. Measures taken to address any evidence identified as a result of an inspection required under Part II G."

62. During the inspection on October 10, 2019, DEQ staff observed that major grading and the building pad construction occurred on site and sediment traps and diversions were not installed as described on the approved ESC plan. The sediment trap located at the southwest corner of the Site was filled before the upslope drainage area had been stabilized. The sediment trap was not maintained in accordance with the construction sequence as described in the approved plans.

9 VAC 25-870-54(B) states: "An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities. Prior to land disturbance, this

plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations.”

9 VAC 25-870-54(C) states: “A stormwater management plan consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the VSMP authority.”

9 VAC 25-840-40(4) states: “Sediment basins and traps, perimeter dikes, sediment barriers and other measures intended to trap sediment shall be constructed as a first step in any land-disturbing activity and shall be made functional before upslope land disturbance takes place.”

63. During the inspection on October 10, 2019, DEQ staff observed that onsite stockpiles, located at the southeast corner and northwest portions of the Site, were not protected with sediment trapping measures nor had they been stabilized.

9 VAC 25-840-40(2) states: “During construction of the project, soil stock piles and borrow areas shall be stabilized or protected with sediment trapping measures. The applicant is responsible for the temporary protection and permanent stabilization of all soil stockpiles on site as well as borrow areas and soil intentionally transported from the project site.”

9 VAC 25-870-54(B) states: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations.”

64. During the inspection on October 10, 2019, DEQ staff observed that sediment was being tracked from the Site onto an adjacent public road (Rocky Hill Road- Route 153). The sediment was being tracked from a secondary construction entrance, which was not on the approved ESC plan. In addition, no control measures were in place to minimize the transport of sediment from the Site onto the public road.

9 VAC 25-840-40(17) states: “Where construction vehicle access routes intersect paved or public roads, provisions shall be made to minimize the transport of sediment by vehicular tracking onto the paved surface. Where sediment is transported onto a paved or public road surface, the road surface shall be cleaned thoroughly at the end of each day. Sediment shall be removed from the roads by shoveling or sweeping and transported to a sediment control disposal area. Street washing shall be allowed only after sediment is removed in this manner. This provision shall apply to individual development lots as well as to larger land-disturbing activities.”

9 VAC 25-870-54(B) states: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations.”

65. During the inspection on October 10, 2019, DEQ staff observed that there was no port-a-jon for sanitary waste on the Site.

9 VAC 25-870-56 states in part: “A plan for implementing pollution prevention measures shall be developed, implemented, and updated as necessary. At a minimum, such measures must be designed, installed, implemented, and maintained to: 2. Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; ...”

2019 Permit Part II.B.4.e states that the pollution prevention plan shall describe the pollution prevention practices and procedures that will be implemented to prevent the discharge of sanitary wastes.

66. Va. Code § 62.1-44.5 states in part, “Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to . . . Discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land disturbing activities.”
67. The VSMP Regulations, at 9 VAC 25-870-310(A), also states, “Except in compliance with a state permit issued by the board pursuant to the Virginia Stormwater Management Act, it shall be unlawful for any person to discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land-disturbing activities.”
68. DEQ staff have verified that the violations described in paragraphs C (57)-(67) have been corrected.
69. Based on the results of the October 10, 2019 inspection, the Board concludes that JMB violated Va. Code § 62.1-44.5, 9 VAC 25-870-310(A), 9 VAC 25-840-40(2), 9 VAC 25-840-40(4), 9 VAC 25-840-40(17), 9 VAC 25-870-54(B), 9 VAC 25-870-54(C), 9 VAC 25-870-54(D), 9 VAC 25-870-56, and the conditions of Section II.B, II.C., and II.G of the 2019 Permit, by discharging stormwater from a construction activity while concurrently failing to comply with the conditions of the State Permit, as described in paragraphs C (57)-(67) of this Order.

#### **All Sites**

70. On September 16, 2019, SWRO issued NOV No. NOV-008-0919-SC to JMB for the violations described above for Sites 1, 2, and 3.
71. On October 17, 2019 Department staff met with representatives of JMB to discuss the company's compliance and corrective actions at Sites 1, 2, and 3.
72. On November 1, 2019, PRO issued NOV No. 2019-10-PRO-205 to JMB for the violations described above for Site 4.
73. On November 1, 2019, JMB responded acknowledging receipt of the PRO NOV and JMB submitted a written response on November 11, 2019.

**SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, the Board orders JMB and JMB agrees to: Pay a civil charge of \$21,000 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

JMB shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Stormwater Management Fund. If the Department has to refer collection of moneys due under this Order to the Department of Law, JMB shall be liable for attorneys' fees of 30% of the amount outstanding.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of JMB for good cause shown by JMB, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 et seq., after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and NOV No. NOV-008-0919-SC dated September 16, 2019 and NOV No. 2019-10-PRO-205 dated November 1, 2019. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently

discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, JMB admits the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.
4. JMB consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. JMB declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by JMB to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. JMB shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. JMB shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. JMB shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and JMB. Nevertheless, JMB agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after JMB has completed all of the requirements of the Order;
  - b. JMB petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to JMB.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve JMB from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by JMB and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representatives of JMB certify that he is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind JMB to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of JMB.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, JMB voluntarily agrees to the issuance of this Order.

And it is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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Tiffany R. Severs, Enforcement Director  
Department of Environmental Quality

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JMB Investment Company, LLC voluntarily agrees to the issuance of this Order.

Date: 5/15/20 By: [Signature], Vice President  
(Person) (Title)  
JMB Investment Company, LLC

State of Tennessee  
~~Commonwealth of Virginia~~  
City/County of Knox

The foregoing document was signed and acknowledged before me this 15<sup>th</sup> day of  
May, 2020, by Jason Brown who is  
Vice President of JMB Investment Company, LLC on behalf of the  
company.

Crystal B Marshall  
Notary Public

N/A  
Registration No.

My commission expires: 6/6/2023

Notary seal:

